

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

CHARLES AND BEVERLY PETERSON,)	
)	
Appellants,)	
vs.)	OSPI 235-94
)	
BOARD OF TRUSTEES FOR SCHOOL)	<u>DECISION AND ORDER</u>
DISTRICT NO. 16A, HILL COUNTY,)	
)	
Respondents.)	

* * * * *

PROCEDURAL HISTORY OF THIS APPEAL

Charles and Beverly Peterson live in School District No. 57, Hill County. Their child is a student attending school in District 16/A, Hill County and riding District 16/A's bus. In 1992, the Petersons requested that the District 16/A Trustees change the bus route. The Trustees denied the request.

The Petersons appealed the Trustees' decision to the Hill County Transportation Committee [hereinafter "the Hill County Committee"]. The appeal was dismissed without hearing in an order dated July 30, 1993. The Petersons appealed that order to this Superintendent who remanded the matter to the Hill County Committee for a hearing as required by § 20-10-132, MCA, Peterson v. Board of Trustees for School District No. 16/A, OSPI 226-93, decided November 19, 1993, 12 Ed.Law 204 (OSPI 1993).

On December 6, 1993, the Hill County Committee heard the Peterson's appeal of District 16/A Trustees' decision not to change

the bus route. The Hill County Committee issued an order January, 1994, upholding the Trustees' decision.

STANDARD OF REVIEW

This Superintendent's review of a County Superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in Rule 10.6.125, ARM. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No. 6 and F, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986).

The State Superintendent may not substitute her judgment for that of a County Superintendent as to the weight of the evidence on questions of a fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." State Compensation Mutual Insurance Fund v. Lee Rost Logging, 252 Mont. 97, at 102, 827 P.2d 85, at 88 (1992).

DECISION AND ORDER

The decision of the Hill County Committee is supported by substantial, credible evidence. The order of the Committee is AFFIRMED.

MEMORANDUM OPINION

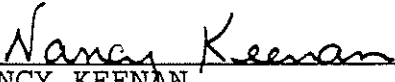
Section 20-10-132(1)(d), MCA, states in part that transportation committees must "conduct hearings to establish the facts of transportation controversies . . . and act on such appeals on the basis of the facts established at such hearing." The Hill County Committee gave the Petersons and District 16/A an opportunity to be heard on this matter. The parties have differing opinions and their testimony conflicts. The Committee found District 16/A's testimony to be persuasive. On review, the State Superintendent does not substitute her judgment for that of the Committee as to the weight of the evidence on questions of fact. The record is reviewed to determine if there is substantial, credible evidence to support the conclusion.

The Hill County Committee heard testimony about the dispute between the Petersons and District 16/A. The record shows that the Committee based their decision to uphold the decision of the District 16/A Trustees on substantial, credible evidence. The District's representative testified that this route has been in place since 1978. He testified that a change in the route would be more convenient for the Petersons but would inconvenience other families on the route. He testified that a change in the route to provide all families on the route the most convenient pick up and drop off point would add 42 miles to the route (Tr., p. 7).

//

Both the Peterson's and District 16/A should note that tuition and transportation agreements required by §§ 20-5-320 and 321, MCA, may be relevant to this dispute.

DATED this 27 day of July, 1994.


NANCY KEENAN

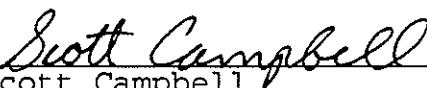
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 27~~th~~ day of July, 1994, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

Charles & Beverly Peterson
Route 1, Box 54
Havre, MT 59501

Board of Trustees
School District No. 16A
Box 7791
Havre, MT 59501

Shirley Isbell, Chairperson
Hill County Transportation Committee
Hill County Courthouse
315 4th Street
Havre, MT 59501


Scott Campbell
Paralegal Assistant
Office of Public Instruction